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11

12 UNITED STATES DISTRICT COURT
13

14 NORTHERN DISTRICT OF CALIFORNIA

15 PERFECT 10, INC., a California
16 corporation,

17 Plaintiff,
18 v.

19 YANDEX N.V., a Netherlands limited
liability company; YANDEX LLC., a
20 Russian limited liability company;
YANDEX INC., a Delaware
corporation; and DOES 1 through 100,
21 inclusive,

22 Defendants.

CASE NO. CV 12-1521 WHA

**DECLARATION OF DR. NORMAN
ZADA IN SUPPORT OF PERFECT 10'S
OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: July 11, 2013

Time: 8:00 A.M.

Ctrm: 8

Judge: Honorable William Alsup

Discovery Cut-Off Date: July 31, 2013

Pretrial Conference Date: November 21, 2013

Trial Date: November 28, 2013

DECLARATION OF DR. NORMAN ZADA

I, Norman Zada, declare as follows:

1. I am President of Plaintiff Perfect 10, Inc. (“Perfect 10” or “P10”).

Because of Perfect 10's severe financial losses, I have been involved in a significant part of Perfect 10's legal work for more than ten years. Since 2004, I have created and sent out more than 2,500 DMCA notices. I assemble most of the documents for production, draft my own declarations, and am involved in the drafting of many briefs along with my attorneys. I have first-hand knowledge of the facts stated herewith, and if called to testify, could and would testify truthfully and competently.

2. The Exhibits attached hereto, except where otherwise noted, fall into one of the following categories: (a) true and correct copies of DMCA notices that I sent to Yandex Inc., Yandex N.V. and Yandex LLC (“Defendants”) or (“Yandex”); (b) true and correct copies of snapshots of my computer screen, which I captured using the program “Snagit;” (c) true and correct copies of webpages I downloaded from the Internet; (d) true and correct copies of one of the Northern District’s rulings in *Louis Vuitton Malletier v. Akanoc Solutions, Inc.*, Case No. CV-07-03952-JW, Dkt. No. 281 (N.D. Cal. March 19, 2010) which related to extraterritorial issues; and (e) true and correct copies of documents from the *Perfect 10, Inc. v. Google, Inc.* case docket, United States District Court – Central District of California, Case No. CV 04-9484-AHM (“*Perfect 10 v. Google*”), as well as true and correct copies from the appeal to the Ninth Circuit case docket, *Perfect 10, Inc., et al v. Amazon.com, Inc., et al*, United States Court of Appeals for the Ninth Circuit, Case No. 06-55405 (“*Perfect 10 v. Amazon.com*”). Exhibits reflecting dates contain the correct date the document was downloaded, captured and/or saved, and, when applicable, the URL of the webpage. I have added yellow highlighting, red arrows, text boxes, and red ellipses to some of the exhibits for the convenience of the Court.

3. Perfect 10 had revenues of more than \$1,000,000 a year when it filed its Motion for Preliminary Injunction against Google on August 24, 2005 in *Perfect 10 v.*

1 *Google*, (Dkt. No. 22), and its cell phone downloading business was making about
2 \$5,000 a month, just from European sales. Since that time, Perfect 10 has been forced
3 to stop publishing its magazine and ended its selling of images for cell phone viewing
4 because of lack of demand. Perfect 10 has had to lay off virtually all of its employees.
5 It now consists of two effective employees, myself and Melanie Poblete. Perfect 10's
6 revenues are less than \$60,000 a year.

7 4. Attached as **Exhibit 1** is a disk, filed separately, which contains folders
8 with materials as described below.

9 5. Perfect 10 has provided Yandex with at least 245 DMCA notices, which
10 identified at least 20,000 infringing Perfect 10 thumbnails, which I personally
11 downloaded in order to create those notices. Even though Yandex has removed or
12 blocked most if not all of those thumbnail size images as a result of those notices (after
13 waiting, in some cases, over a year to do so), Yandex is still continuing to display and
14 offer to its users, at least 20,000 other infringing P10 thumbnails, many of which are
15 identical to the ones it blocked. Yandex is also continuing to place ads around at least
16 4,000 full-size Perfect 10 images. The Perfect 10 images described in Exhibits 2-5,
17 have all been the identified in multiple Perfect 10 DMCA notices. Yandex has also
18 been advised that it cannot display or place ads around images that display Perfect 10
19 copyright notices under any circumstances. I have placed a number of examples of
20 Yandex continuing to copy and display large numbers of Perfect 10 images in Exhibit
21 1 (the disk), in a folder labeled, “Still up.”

The Operation of Yandex Search Compared To Google

23 6. Yandex offers at least three search engines, yandex.com, yandex.ru, and
24 fotki.yandex.ru. Attached as **Exhibit 2** are true and correct copies of pages I obtained
25 using Yandex’s fotki.yandex.ru search engine. I obtained the search results on pages
26 1-2 of Exhibit 2 by typing “Amy Weber” into the fotki.yandex.ru search box on June
27 9, 2013 and pressing enter. On page 1, I have added two text boxes with arrows to
28 show the location of the Yandex ads and to indicate the search term. Perfect 10 owns

1 to copyrights to some, but not all, of the images of Amy Weber shown on pages 1-2. I
2 obtained page 3 of Exhibit 2 by clicking on the first image on the third row of page 1.
3 I have circled a fotki.yandex.ru option on page 3 which allows the user to determine
4 the size of the images that are displayed to them once thumbnails are clicked on.
5 Attached as page 4 of Exhibit 2 is the result I obtained when I clicked on the same P10
6 thumbnail on page 1 after I selected one of the largest image display sizes. To my
7 knowledge, this is a feature that is not available on Google's search function and is
8 highly unusual, because if the image had been uploaded by an independent third party,
9 it would not normally, in my experience, be uploaded in multiple sizes by that third
10 party. Attached as page 5 is the Yandex search result I obtained doing a
11 fotki.yandex.ru seach on "Luba Shumeyko." The Yandex ads are on the left side, as
12 indicated by the text box and arrow. I obtained page 6 of Exhibit 2 by clicking on the
13 third thumbnail image from the left on page 5. All of the images on page 6 are
14 copyrighted by Perfect 10 and, to the best of my knowledge, display Perfect 10
15 copyright notices. Pages 7-10 are the result of my clicking on the corresponding
16 thumbnails on page 6. Page 11 contains a number of images, some of which belong to
17 Perfect 10. I have added a text box and arrows to show the Yandex advertisements on
18 the bottom of the page. Pages 12-14 are the pages I obtained by clicking on the
19 corresponding Perfect 10 thumbnails on page 11. There are four Yandex ads below
20 each of the infringing images on pages 12-14, as indicated by a text box and arrows. I
21 have placed approximately 1,000 examples of current infringements of Perfect 10
22 images on yandex.fotki.ru servers in Exhibit 1 (the disk) in a folder labeled "Fotki.
23 Yandex ru." Page 15 of Exhibit 2 states that Yandex keeps search results on "backup
24 servers" and uses "the least loaded of the thousands of basic search servers,"
25 suggesting that it may keep copies of yandex.ru hosted images in the United States. I
26 have placed more examples of Yandex continuing to place its ads next to known
27 infringing Perfect 10 images in Exhibit 1 (the disk) in a folder labeled "Yandex ads."

28 7. Attached as page 1 **Exhibit 3** are the results of an image search I

1 conducted on yandex.com for “Marisa Miller Perfect 10” on June 3, 2013. Attached as
 2 page 2 of Exhibit 3 is the result I obtained by clicking on the third thumbnail from the
 3 left on page 1. This larger image of Marisa Miller contains a Perfect 10 copyright
 4 notice in the upper right corner of the image. There is a link to the right of Perfect 10’s
 5 full-size image for the infringing website focushaber.com. However, as shown by the
 6 properties box on the right side of page 3, the actual image is from the website
 7 dezinfo.net. I obtained page 4 of Exhibit 3 by doing a *yandex.ru* image search on
 8 “Marisa Miller Perfect 10” on June 3, 2013. Attached as pages 5-7 are the results I
 9 obtained by clicking on the three corresponding *yandex.ru* thumbnails on page 4, In
 10 each case, there is a Yandex ad directly to the right of the unauthorized Perfect 10
 11 image (circled). Attached as page 8 of Exhibit 3 is an example of a Yandex ad next to
 12 an image of Evelina Stachnik that was identified on page 4 of DMCA Sample Notice 2
 13 from Perfect 10’s Motion for Summary Judgment (Docket No. 105-4, Exh. 3, page 4).
 14 I have attached 15 more examples of Yandex ads next to full-size Perfect 10 images of
 15 Marisa Miller in Exhibit 1 in a folder labeled “Yandex Ads.”

16 8. Both yandex.com and yandex.ru offer a “search by image” feature which,
 17 at the time of the Ninth Circuit ruling in *Perfect 10 Inc. v. Amazon.com, Inc.*, 508 F.3d
 18 1146 (9th Cir. 2007), was not available on google.com. Attached as pages 1-2 of
 19 **Exhibit 4** are the first and next to last pages of 200 “celebrity fake images,” meaning a
 20 celebrity face (in this case, Megan Fox) superimposed on a Perfect 10 copyrighted
 21 image) that I obtained by doing a Yandex “search by image” on June 3, 2013. I have
 22 included all 200 images in a file in Exhibit 1 (the disk) labeled “Still up.” Attached as
 23 page 3 of Exhibit 4 is a current example of a Yandex ad next to that infringing image.

24 9. Attached as pages 1-3 of **Exhibit 5** are true and correct copies of pages
 25 from Perfect 10’s First Amended Complaint in this case (“FAC”) (Dkt. No. 88, pp. 28,
 26 30, 35). The red arrows were added by me and were also included in the FAC filing.
 27 Perfect 10 created a few free websites, such as naturaltens.com, in an attempt to draw
 28 traffic to its paysite, perfect10.com. Page 1 shows a thumbnail which Yandex

1 presumably created after it crawled one of Perfect 10's free websites, most likely
 2 naturaltens.com because the image shows a Perfect 10 redaction banner. While the
 3 thumbnail on page 1 is from a Perfect 10 website, the link that yandex.com places
 4 below that thumbnail actually links to en5min.fr, an infringing website. In other
 5 words, ***the thumbnail is not being used as a pointer to the source of the thumbnail.***
 6 Page 2 of Exhibit 5 shows the result I obtained by clicking on the thumbnail on page 1.
 7 This is what I refer to as the Yandex "Full-size image view" page. There is no text or
 8 logo on this page from naturaltens.com. Just a link created by Yandex. The details
 9 box shown on page 3 indicates that the full-size image is from the website
 10 mojesanje.files.wordpress.com, not naturaltens.com. Attached as page 4 is a copy of a
 11 corresponding Full-size image view page I printed from yandex.ru on June 1, 2013.
 12 There is a Yandex ad next to the image in in this page. There is no link to
 13 perfect10.com or naturaltens.com on this page. In my experience, Yandex's "Full-size
 14 Image view" page displays the largest version of the image available. In other words,
 15 if the image from which Yandex created the thumbnail was a small image from a
 16 certain website, when the user clicks that thumbnail, Yandex will display a full-size
 17 image to that Yandex user from a different website. Typically in my experience, the
 18 website Yandex created the thumbnail from is not the website from which Yandex
 19 displays the full-size image.

20 10. Attached as **Exhibit 6**, are true and correct copies of pages from my
 21 declaration as it was filed on August 22, 2006 in *Perfect 10, Inc., et al v. Amazon.com,*
 22 *Inc., et al*, United States Court of Appeals for the Ninth Circuit, Case No. 06-55405,
 23 Dkt. No. 37. What appears on these pages are the results I obtained in 2005 when I
 24 clicked on various Google thumbnails. In each instance, nearly all of the page was
 25 filled by content from the third party website that was the source of the image from
 26 which the thumbnail was created, with only a Google-created frame on the top of each
 27 page. In all instances, no full-size image was immediately visible. In my experience,
 28 although in some instances clicking on the Google thumbnail led to a page from the

1 third party website which displayed the full-size image, that was a much less frequent
 2 experience than occurs with Yandex, where most of the time, clicking on the
 3 thumbnail displays a full-size image. If there were Google ads in the lower portion of
 4 the screen, they emanated from the third party website, who shared the revenues from
 5 clicks on those ads with Google to the best of my knowledge. At the time, to the best
 6 of my knowledge, the third party website received the lion's share of the revenue from
 7 such ad-clicks. In the case of Yandex, the user never actually even sees the third party
 8 site, but rather, the full-size image is directly displayed on the Yandex site, with
 9 Yandex ads placed directly next to the images.

10 11. Attached as **Exhibit 7**, are true and correct portions of the public version
 11 of a portion of Google's Second Brief on Cross-Appeal, Appellee/Cross-Appellant
 12 Google's Inc.'s Response/Principal filed on July 13, 2006 in *Perfect 10, Inc., et al v.*
 13 *Amazon.com, Inc., et al*, United States Court of Appeals for the Ninth Circuit, Case
 14 No. 06-55405, Dkt. No. 28. with portions highlighted for ease of reference. The full
 15 version public version is attached in Exhibit 1 (the disk), in a folder labeled "Google."
 16 On page 1, Google states that "Before a thumbnail is displayed to a user, Google
 17 Image Search checks a "blacklist" file to see whether the thumbnail display should be
 18 suppressed...". Google never suggested that because it linked to an infringing website
 19 overseas, it had no obligation to remove links to that website. Page 2 states,
 20 "**Publishers, not Google, determine the location of advertisements.**" (emphasis in
 21 original). Page 3 states, "The AdSense policy specifically excludes web pages with
 22 "Image Results" from participating in the AdSense program. The policy states:
 23 "Copyrighted Material: In order to avoid associations with copyright claims, website
 24 publishers may not display Google ads on web pages with MP3, Video, News Groups,
 25 and Image Results. ... In addition, it is Google's intention to exclude sites with
 26 pornography, adult, or mature content ... from its AdSense program." Page 4 states,
 27 Google diligently responds to notices of alleged infringement...". On page 8, Google
 28 described itself as a "general purpose search engine without any culpable intent..." On

1 page 9, Google states, “P10 failed to prove any underlying violations by Google
 2 users.... And the District Court correctly found that P10 presented no evidence of
 3 any.” On page 10, Google stated, “Google’s economic interests are not intertwined
 4 with exploitation of copyrighted materials.” On page 14, Google states, “The District
 5 Court’s failure to credit the ‘enormous benefit’ that Google provides...”

6 12. When Perfect 10 filed its Motion for Preliminary Injunction against
 7 Google on August 24, 2005 in *Perfect 10 v. Google*, (Dkt. No. 22), to the best of my
 8 recollection, Google was displaying between 1,500 and 2,500 Perfect 10 thumbnails in
 9 its image search results. Each such thumbnail was linked to a website that typically
 10 offered, on average, 5-10 infringing Perfect 10 images. Attached as **Exhibit 8** is a true
 11 and correct copy of a page from the transcript of oral argument before the Ninth
 12 Circuit on November 15, 2006 in *Perfect 10, Inc., et al v. Amazon.com, Inc., et al*,
 13 United States Court of Appeals for the Ninth Circuit, Case No. 06-55405. In that
 14 argument, Russell Frackman, attorney for Perfect 10, told the panel that 1,500 Perfect
 15 10 thumbnails were at issue. Yandex is currently linking a typical Perfect 10
 16 thumbnail to a website which, on average, infringes at least 1,000 Perfect 10 images.
 17 This is because most of the thumbnails which Yandex utilizes come from massive
 18 infringing websites, such as fuckyeah.bz, kadets.info, ns4w.org, nudecelebforum.com,
 19 pelotka.com, pokazuha.ru, phun.org, urlgalleries.net, and ymorno.ru. These websites
 20 infringe, in total at least 28,000 Perfect 10 images.

21 13. To the best of my knowledge, after the Ninth Circuit ruling in *Perfect 10*
 22 *Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007), massive websites began to
 23 emerge, such as phun.org, nudecelebforum.com, and ns4w.org, which displayed their
 24 images from other “image host” websites, such as imagebam.com, imagevenue.com,
 25 imagesocket.com, imgchili.com, hotlinkimage.com, sharenx.com, picfoco.com,
 26 imageupper.com and others to avoid liability for direct copyright infringement under
 27 the Ninth Circuit “server test.” Attached as pages 1-3 of **Exhibit 9** are domain tools
 28 records showing that imagebam.com has been hosted in Chicago since at least July 13,

1 2009. Attached as pages 4-5 of Exhibit 9 are domain tools reports showing that
 2 sharenx.com has been hosted in the United States from May 28, 2011 to September
 3 12, 2012. Attached as pages 6-7 of Exhibit 9 are domain tools reports showing that
 4 imgchili.com has been hosted in the United States since July 1, 2012. Attached as
 5 pages 8-9 of Exhibit 9 are DomainTools reports showing that imagesocket.com has
 6 been hosted in the United States between May 15, 2011, and January 16, 2013.
 7 Attached as page 10 of Exhibit 9 is a domain tools report showing that
 8 imageupper.com is hosted in the United States.

9 14. Attached as page 1 of **Exhibit 10** is a print screen of a portion of
 10 Yandex’s “Summary of foreign infringements” spreadsheet, which lists the URL
 11 kadets.info/showthread.php?t=57943 as being “extraterritorial, as included within the
 12 disk filed as Exhibit A to the Declaration of Geoffrey A. Grundy in Support of
 13 Defendant Yandex’s Motion for Partial Summary Judgment (Dkt. No. 155-18).
 14 Attached as page 2 of Exhibit 10 is a printscreen of the corresponding web page. I
 15 have right clicked on one of the Perfect 10 images on that page to show the properties
 16 box which indicates that image is actually from imagebam.com which is hosted in the
 17 United States. Pages 3-8 of Exhibit 10 are webpages with URLs that are listed in
 18 Yandex’s “Summary of foreign infringements” spreadsheet that are listed as being
 19 “extraterritorial.” However, those webpages display images which are from
 20 imagebam.com which is hosted in the United States. (See Exhibit 9). Pages 9-12 are
 21 webpages with URLs that are listed in Yandex’s “Summary of foreign infringements”
 22 spreadsheet that are listed as being “extraterritorial.” However, those webpages
 23 display images which are from imageupper.com, which is hosted in the United States.
 24 (See Exhibit 9). Pages 13-19 are other examples of images displayed by websites that
 25 Yandex claims are “extraterritorial” which are in fact hosted in the United States.

26 15. Attached as page 1 of **Exhibit 11** is a page I printed from phun.org on
 27 December 8, 2012. I obtained this page by doing a search on phun.org for Zoya
 28 Konyieva, the name of a Perfect 10 model. I placed a red circle around the search

1 function on this phun.org page. In the center of the page, are two Phun.org “threads”
2 of Perfect 10 images which are offered to phun.org users. I have circled where it says,
3 “Views 2,644,529.” This Perfect 10 thread offers at least 4,000 Perfect 10 images.
4 The thread below it offers over 1,000 Perfect 10 images. I obtained page 2 of Exhibit
5 by doing a search for “Alice Findley,” a Perfect 10 model, on the website
6 nudecelebforum.com on the same date. The resulting Perfect 10 thread offered has
7 over 5,700 Perfect 10 images and, until recently, offered many more. I have circled
8 where it says “Views 805,639.”

9 **Yandex Has Refused To Process Perfect 10’s Recent DMCA Notices**

10 16. Attached as pages 1-11 of **Exhibit 12** is a true and correct copy of a
11 DMCA notice that I sent to Yandex on May 26, 2013 via email. The email receipt is
12 attached as page 12. The notice identified two massive infringing paysites to which
13 Yandex links in its search results: giganews.com and usenet.net. Both websites are
14 hosted in the United States, and each website infringes at least 40,000 copies of Perfect
15 10 copyrighted images. They are arguably the most massive infringing paysites in the
16 world, infringing virtually every major movie, television show, song, image, and
17 software. Because they are paysites, I could not provide Yandex with a URL that
18 would lead directly to infringing Perfect 10 images. I could only provide Yandex
19 URLs that would lead to the home page of the websites or other non-content pages,
20 where the user would have to pay to sign up to search for and receive the infringing
21 materials. However, as shown on pages 7-8, I provided a contact sheet showing the
22 infringing images of Perfect 10 model Marisa Miller that I had downloaded from
23 Giganews, clearly demonstrating that Giganews was hosting and distributing
24 unauthorized copies of Perfect 10 images. I also attached the related list of infringing
25 messages containing those images, as pages 5-6. That list of messages included
26 Perfect 10’s trademarks, such as “GEL_Perfect10” and “P10_website.” Instead of
27 trying to locate such materials on its own, all Yandex needed to do to see that it was
28 linking to massive infringers, is to contact the alleged infringers, show them the notice,

1 and ask them if they had any rights to any of the identified infringing Perfect 10
 2 images. Instead, Yandex sent me the email attached as pages 13-14, stating that they
 3 would not process the notice, and that it was deficient. Yandex refused to process at
 4 least 14 such notices, which identified, in total, more than 7,000 infringing Perfect 10
 5 images. In the instances of massive infringing paysites, such as giganews.com and
 6 usenet.net, it is very rare that a search engine provides a link directly to an infringing
 7 work, because to access most infringing materials on most websites, one must either
 8 pay to join the site, perform a search on the infringing site, or click more than once to
 9 access the infringing materials. Consequently, Yandex's position that it will only
 10 remove a link if it goes directly to an infringing work, is tantamount to a refusal to
 11 remove more than perhaps 1 link in a 1,000 to known infringing websites. All a
 12 website would have to do is place a spacer page between the link and the image, such
 13 as an "Are you over 18?" page, and under Yandex's view, it would not need to remove
 14 any links at all. Attached as page 15 of Exhibit 12 is a spreadsheet which I created
 15 which lists the approximate number of images and web search links that Yandex
 16 provides in response to searches which include the URLs of a number of large
 17 infringing websites that I have repeatedly notified Yandex about. In total, the
 18 spreadsheet indicates that Yandex is continuing to copy and display to its users, as
 19 many as 4,248,196 images from known infringing websites, and is continuing to
 20 provide as many as 1,361,000 web search links to those websites as well. In other
 21 words, Yandex removed a few links as a result of Perfect 10's notices, but is
 22 maintaining thousands of others. Evidence to support the figures in the spreadsheet is
 23 included in Exhibit 1, in a folder labeled "Yandex links to infringing sites."

24 **Flaws In Yandex's Extra-territorial Analysis**

25 17. Yandex's analysis of the approximately 51,960 URLs which it claims are
 26 "extra-territorial" is flawed in a number of ways. Yandex's Motion argues that a
 27 website is "in the United States" if it is hosted in the United States, and outside the
 28 United States if it is not. Yandex does not appear to consider whether the owner of the

1 website is in the United States. If he is, the owner could very well be uploading
2 images from the United States to the “extra-territorial” website. Furthermore, Yandex
3 does not appear to have examined where the images of the “extra-territorial” website
4 are hosted, unless it is to Yandex’s advantage to do so. For example, pages 1-2 of
5 **Exhibit 13** indicate that wordpress.com is hosted in the San Francisco (to keep the
6 number of exhibit pages as low as possible, I just included the relevant domain tools
7 pages). Page 3 of Exhibit 13 is a page from a DMCA notice that I sent to Yandex on
8 October 15, 2011, which identified the images on that page as infringing Perfect 10
9 copyrights. I have placed my cursor over one such image to show where it was hosted.
10 I have circled on page 4 of Exhibit 13, a portion of Yandex’s list of 51,960 URLs that
11 it claims are “extra-territorial.” The URL I have circled on page 4 corresponds to the
12 identified infringing image on page 3. So, on the one hand, Yandex is claiming that
13 wordpress.com is in the United States and therefore part of the case, but then Yandex
14 is attempting to exclude all the images displayed by wordpress.com from the case as
15 shown on page 4. Conversely, Yandex has listed the following websites appearing in
16 Exhibit 10 as being “extra-territorial,” namely nudecelebforum.com, ymorno.ru,
17 kadets.info, planetsuzy.org, and urlgalleries.net, five enormous infringers. However,
18 as shown by Exhibit 10, those websites all display some of their infringing Perfect 10
19 images from websites hosted in the United States. Attached as pages 5 and 7 of
20 Exhibit 13 are the results of image searches I conducted on yandex.ru on June 5, 2013.
21 Most of the images on those pages are copyrighted by Perfect 10. I obtained page 6 of
22 Exhibit 13 by clicking on the link to kadets.info below the center image at the top of
23 page 5. All of the images on page 6 are from imagebam.com, which is hosted in the
24 United States. I obtained page 8 of Exhibit 13 by clicking on the link to
25 shockmodels.su under the top image on the right of page 7. The bottom four images
26 on page 8 are from imagebam.com which is hosted in the United States.

27 18. Yandex’s analysis of the approximately 51,960 URLs which it claims are
28 “extra-territorial” is also flawed because it would have been necessary to Yandex to

1 examine every website host since at least October 14, 2011, the date of Perfect 10's
 2 first notice, if not earlier. It does not appear that Yandex did that. Attached as **Exhibit**
 3 **14** is evidence that six websites, which Yandex claims are "extra-territorial" namely,
 4 mobile24.com, moondogsports.com, shareapic.net, wallpapergate.com, allday2.com,
 5 and pro.com, were hosted in the United States at some point in 2012.

6 19. On page 15 of their brief, Defendants state that "Perfect 10 has produced
 7 no evidence that any user uploads or downloads of allegedly unauthorized Perfect 10
 8 images to Yandex's user-generated content sites took place in the United States."
 9 Perfect 10 has in fact, produced substantial evidence that U.S. based search engines
 10 *including yandex.com* have crawled Yandex hosted websites and downloaded content
 11 from those sites including in the Reply Declaration of Dr. Norman Zada in support of
 12 Perfect 10's Motion for Partial Summary Judgment, Dkt. No. 130-1, ¶24, Dckt. 130-14
 13 (Exh. 29). In total Perfect 10 has produced evidence of U.S. search engines crawling
 14 and incorporating at least 700 Yandex hosted images into their search results.
 15 Attached as pages 1-3 of **Exhibit 15** is an example of how yandex.com displays
 16 thumbnails and full-size images hosted by fotki.yandex.ru. Page 1 is the Yandex
 17 image search result for the search term "site:fotki.yandex.ru april meents." Page 2 is
 18 the result of clicking on the thumbnail image of April Meents on page 1. I obtained
 19 page 3 by clicking on the full-size image on page 2. I have included more examples of
 20 yandex.com displaying images stored on fotki.yandex.ru and narod.ru in Exhibit 1 (the
 21 disk) in a folder labeled "Yandex.com displays fotki.yandex.ru and narod.ru." To the
 22 best of my knowledge, in order for a search engine to make a thumbnail, it must first
 23 make a copy of the full-size image and then use that full-size copy to create the
 24 thumbnail-size version. Consequently, all of the Google thumbnails shown on pages
 25 6-11 of **Exhibit 15** required that the search engine make a copy of the full-size image
 26 first. In another words, in this case, a "U.S. user" (in this case Google), downloaded
 27 infringing Perfect 10 images from Yandex's narod.ru servers in Russia and then made
 28 them available to a worldwide audience via google.com as well. Attached as page 4 of

1 Exhibit 15 is the results of a Google web search I conducted on June 8, 2013, showing
 2 that Google is providing as many as 326 million links to images hosted on
 3 fotki.yandex.ru. Attached as page 5 of Exhibit 15, is the result of a Google search I
 4 conduced on June 8, 2013, showing that Google was providing as many as 2,800 links
 5 to material on fotki.yandex.ru that may be related to Perfect 10 model Luba
 6 Shumeyko. Pages 6-11 of Exhibit 15 are examples of Google providing to its users,
 7 infringing Perfect 10 thumbnail versions of images hosted by Yandex via its narod.ru
 8 servers of Perfect 10 model Luba Shumeyko. I obtained pages 12-13 of Exhibit 16 by
 9 clicking on the respective thumbnails to show the resulting Google displays. In
 10 Exhibit 1, in a folder labeled “Google crawls fotki and narod.ru,” I have placed
 11 examples of more than 500 Perfect 10 images which Google has copied from Yandex
 12 hosted websites narod.ru and fotki.yandex.ru.

13 20. Attached as pages 1-2 of **Exhibit 16** are additional examples of Google
 14 providing to its users thumbnail versions of other images hosted on narod.ru, many of
 15 which are copyrighted by Perfect 10. Attached as page 3 of Exhibit 16, is the result of
 16 a Google web search I conducted on December 19, 2012 for the search term:
 17 site:narod.ru “Amy Weber.” On June 8, 2013, I used that same document, which
 18 contained live links, and clicked on various search results. Attached as pages 4-8 of
 19 Exhibit 16 are the results I obtained on June 8, 2013 by clicking on the links indicated
 20 by red text boxes on page 3. The larger images are all copyrighted by Perfect 10. I
 21 have placed circles on the right side of pages 7-8 around claims by
 22 hotwallpapers.narod.ru that it had received 139,997 visitors as of June 8, 2013.

23 21. Attached as **Exhibit 17** are examples of other search engines, including
 24 Microsoft’s bing.com, and AOL.com, that have made copies of infringing P10 images
 25 offered by narod.ru, and are making them available to their users. Page 5 of Exhibit 18
 26 is the result of a program that Perfect 10 created to export search results of Perfect 10
 27 images offered by AOL.com. The first link next to each thumbnail is the link provided
 28 by AOL to generate the AOL second page when the thumbnail is clicked on.

1 22. Attached as pages 1-8 of **Exhibit 18**, are examples of aol.com,
2 google.com, and yahoo.com displaying images from narod.ru in 2004 in their image
3 search results. Page 9 shows the full-size infringing image of Perfect 10 model Zoya
4 Konyieva I obtained on August 10, 2008 by clicking on the Yahoo link circled on page
5 8. I have put more such examples in Exhibit 1 (the disk), in a folder labeled “Search
6 engines crawl narod.ru.”

7 23. Attached as pages 1-2 of **Exhibit 19** are infringing Perfect 10 images
8 offered by fotki.yandex.ru. Just above both images is an image identifier (or image file
9 name) which begins with the term “tumblr.” Tumblr is an image hosting service
10 hosted in New York City (see page 5). Attached as page 3 of Exhibit 19, is the first
11 page of Google web search results I obtained for the search “site:fotki.yandex.ru
12 tumblr” on June 5, 2013. At the top of the page, I have circled where it says, “About
13 724,000 results.” Attached as page 4 of Exhibit 19, is the first page of Google web
14 search results I obtained for the Google search “site:fotki.yandex.ru amazonaws” on
15 June 5, 2013. Amazonaws is a hosting service offered by Amazon.com in Washington
16 state (see page 6). I have circled where it says “About 5,290,000 results.” The
17 information on pages 3 and 4 suggests that large numbers of images hosted on
18 tumblr.com and amazonaws.com servers in the United States have been uploaded to
19 fotki.yandex.ru servers in Russia. I have added 40 more examples of such apparent
20 uploads from tumblr to fotki.yandex.ru servers in Exhibit 1 (the disk) in a folder
21 labeled “Tumblr uploads.”

22 24. Attached as page 1 of **Exhibit 20**, is a June 9, 2013 print screen which
23 resulted after I did a yandex.ru image search on “Isabelle Funaro,” clicked on the
24 “view source” tab to see the source code for that page, and then did a search on
25 “counter.” The term “counter” appears many times in the source code for yandex.ru
26 image search, suggesting that Yandex is keeping track of the number of clicks on each
27 link on their image search web pages. Attached as page 2 of Exhibit 20, is a June 9,
28 2013 print screen I made of the source code for one of the fotki.yandex.ru pages which

1 displayed a Perfect 10 images of Amy Weber. After I saw the term “Metrika” on that
 2 page, I contacted Stefan Voit, who was recommended to me as an expert in forensic
 3 analysis. I asked him to do what he could to verify that the Yandex Metrika tracking
 4 program was running on that fotki.yandex.ru webpage. (See Declaration of Stefan
 5 Voit, filed concurrently herewith). Attached as pages 3-8 of Exhibit 20, are selected
 6 Yandex pages which describe the Yandex Metrica tracking program. On page 3, it
 7 states, “You can even watch every click, scroll and keystroke performed on your
 8 website as if you were looking through the eyes of the visitor. On page 4, it states that
 9 “[s]ite owners can replay user actions exactly as they occurred, to see what happens on
 10 each page, how users navigate, right down to every mouse movement, keystroke and
 11 click.” On page 5 it states, “Here you can see how many files were downloaded from
 12 your site.” On page 8, it gives an example of how Yandex Metrica keeps track of click
 13 data.

14 25. Attached as **Exhibit 21**, is a page from Yandex’s Privacy Policy located
 15 on <http://legal.yandex.com/privacy>. It states, “Cookies are small files placed on your
 16 computer that are used for recording your operations on the Site and through the
 17 Services, including web pages you visit, *Content you retrieve ...* “ (emphasis added).

18 26. Attached as **Exhibit 22** are selected pages from material on yandex.com
 19 that I downloaded regarding Yandex’s web browser, “Yandex.Browser.” On page 3 it
 20 states, “The User hereby acknowledges and agrees that when the automatic statistics
 21 function of the software is enabled, the Rightholder automatically receives information
 22 about the website visited, pages viewed and files uploaded...” Page 4 indicates that
 23 Yandex also keeps track of the user’s IP address.

24 27. Attached as page 1 of **Exhibit 23** is a Wikipedia description of Yandex.
 25 It states that Yandex receives 150 million searches per day. Attached as page 2 of
 26 Exhibit 23 is a report from alexa.com (a site owned by Amazon.com that monitors
 27 website traffic) which indicates that .5% of yandex.ru traffic comes from the United
 28 States. Page 3 of Exhibit 23 indicates that 5.3% of yandex.com traffic comes from the

1 United States.

2 28. A number of representations made by Google to the District Court as well
 3 as to the Ninth Circuit in *Perfect 10 v. Amazon.com*, were later contradicted by new
 4 evidence. Attached as pages 1-3 of **Exhibit 24** are true and correct copies of excerpts
 5 from the final Ninth Circuit ruling in the *Amazon.com*. On page 1, it states, “Google
 6 does not store the images that fill this lower part of the window and does not
 7 communicate the images to the user.” This finding was based on representations made
 8 by Google that none of the images in the lower part of the screen were stored on
 9 Google servers. Attached as page 4 of Exhibit 24 is an example from Perfect 10’s
 10 brief as it was filed on August 22, 2006 in *Perfect 10, Inc., et al v. Amazon.com, Inc.,*
 11 *et al*, United States Court of Appeals for the Ninth Circuit, Case No. 06-55405, Dkt.
 12 No. 37, which shows that Google was in fact displaying Perfect 10 images from its
 13 own blogspot.com servers during the time Google claimed it was not. At the time,
 14 Google was hosting both the blogger.com and blogspot.com domains, but Perfect 10
 15 was not aware of that fact. The larger image on page 4 was hosted on Google’s
 16 blogspot.com servers. On pages 2 and 3 of Exhibit 24, the Ninth Circuit’s ruling
 17 indicates that the panel took into consideration Google’s papers that image recognition
 18 was not available, and that Google differed from Napster because Napster was a closed
 19 system (it controlled what appeared in its index) whereas Google was not.

20 29. Attached as **Exhibit 25** are true and correct excerpts from the public
 21 version of the February 28, 2007 deposition of John R. Levine, an expert for Google
 22 in *Perfect 10, Inc., et al v. Amazon.com, Inc., et al*, United States Court of Appeals for
 23 the Ninth Circuit, Case No. 06-55405, on whose declaration Google relied. Page 3 of
 24 Exhibit 25 (page 207 of the deposition transcript) dealt with testimony that occurred
 25 after Mr. Levine was directed to a website dimworld.free.fr, which happened to display
 26 its images from a different website, poufs.free.fr. Mr. Levine was asked which website
 27 was more responsible for the display, the displaying site dimworld.free.fr, or the
 28 hosting site poufs.free.fr. Mr. Levine responded, “They both have to provide the

material.” When asked “The webmaster of Dimword decided which images appear on the Dimworld website, right? Mr. Levine responded, “That is presumably true.” On page 3, when asked, “who had more control over its index, Napster over its song index or Google over its Image Search index? Mr. Levine responded, “..to the extent that Napster controlled their index and Google controls their index, it’s the same.... Napster was in control of its index and Google is in control of its index.”

30. Attached as **Exhibit 26** are excerpts from the Northern District's ruling in *Louis Vuitton Malletier v. Akanoc Solutions, Inc.*, Case No. CV-07-03952-JW, Dkt. No. 281 (N.D. Cal. March 19, 2010) I have included the full version of that ruling in Exhibit 1 (the disk), in a folder labeled "Vuitton Ruling." Attached as pages 1-4 of Exhibit 26 are true and correct copies of four pages from the ruling that deal with extraterritorial issues.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed this 13th day of June 2013 in Los Angeles, California.

M. Zada
NORMAN ZADA